

AMENDIT 3
4/2/07
S&S

Amendments to Senate Bill No. 547
3rd Reading Copy

Requested by Representative Ron Stoker

For the House Judiciary Committee

Prepared by David Niss
March 30, 2007 (6:18pm)

1. Title, line 11.

Following: "41-5-1513,"

Insert: "45-1-205, 45-5-502,"

Following: "45-5-503,"

Insert: "45-5-507, 45-5-512,"

2. Page 2, line 5.

Following: "(3)"

Insert: "or (4)"

3. Page 7.

Following: line 3

"Insert: "Section 4. Section 45-1-205, MCA, is amended to read:

"45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) or (5) may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(c) A prosecution under 45-5-504, 45-5-505, 45-5-507(1), (2), (3), or ~~(5)~~ (6), 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended

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in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

{Internal References to 45-1-205:

13-35-101X 87-1-110X}"

**Insert: "Section 5. Section 45-5-502, MCA, is amended to read:
"45-5-502. Sexual assault. (1) A person who knowingly**

subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) A Except as provided in subsections (3) and (4), a person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than \$50,000.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall, upon a second or subsequent offense punishable pursuant to this subsection (4) (a), be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4) (a) (i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (4), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (4) (a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse without consent for which the person is being sentenced under subsection (4) (a);

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; or

(v) is known by the victim but does not fall within subsections (4) (c) (i) through (4) (c) (iv).

(4)(5) An act "in the course of committing sexual assault"

includes an attempt to commit the offense or flight after the attempt or commission.

~~(5)~~(6) Consent is ineffective under this section if:

(a) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search; or

(b) the victim is less than 14 years old and the offender is 3 or more years older than the victim."

{ Internal References to 45-5-502:

27-2-216X	39-51-2111X	40-4-219X	40-15-102X
40-15-116X	42-2-608X	44-5-311X	45-1-205X
45-5-512X	45-5-512A	45-5-512X	46-16-216X
46-18-104X	46-18-111X	46-18-205A	46-18-222X
46-18-231A	46-23-502A}		

Renumber: subsequent sections

4. Page 8, line 22.

Strike: "or"

5. Page 8, line 24.

Following: "person"

Insert: "; or"

(v) is known by the victim but does not fall within subsections (4)(c)(i) through (4)(c)(iv)"

6. Page 8.

Following: line 30

Insert: "Section 7. Section 45-5-507, MCA, is amended to read:

"45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A Except as provided in subsections (4) and (5), a person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed \$50,000.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4

years or more than 100 years and may be fined not more than \$50,000.

(5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (5) (a) (i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (5), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (5) (a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse without consent for which the person is being sentenced under subsection (5) (a);

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; or

(v) is known by the victim but does not fall within subsections (5) (c) (i) through (5) (c) (iv).

(5) (6) In addition to any sentence imposed under subsection (3), (4), or (5), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

{ Internal References to 45-5-507:

27-2-216X	39-51-2111X	40-4-219X	40-15-102X
40-15-116X	42-2-608X	44-5-311X	45-1-205X
45-1-205A	45-5-512A	45-5-512A	45-5-512A
46-16-216X	46-18-104X	46-18-111X	46-18-205X
46-23-502A	46-23-506X		

Insert: "Section 8. Section 45-5-512, MCA, is amended to read:

"45-5-512. Chemical treatment of sex offenders. (1) A person convicted of a first offense under 45-5-502(3) or (4),

45-5-503(3), or 45-5-507(4) or (5) may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4).

(2) A person convicted of a second or subsequent offense under 45-5-502(3) or (4), 45-5-503, or 45-5-507 may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4).

(3) A person convicted of a first or subsequent offense under 45-5-502, 45-5-503, or 45-5-507 who is not sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, may voluntarily undergo such treatment, which must be administered by the department of corrections or its agent and paid for by the department of corrections.

(4) Treatment under subsection (1) or (2) must begin 1 week before release from confinement and must continue until the department of corrections determines that the treatment is no longer necessary. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years.

(5) Prior to chemical treatment under this section, the person must be fully medically informed of its effects.

(6) A state employee who is a professional medical person may not be compelled against the employee's wishes to administer chemical treatment under this section."

{Internal References to 45-5-512:

46-18-201A}"

Renumber: subsequent sections

7. Page 10, line 22.

Strike: "or"

8. Page 10, line 24.

Following: "person"

Insert: "; or

(v) is known by the victim but does not fall within subsections (4)(c)(i) through (4)(c)(iv)"

9. Page 12, line 18.

Following: "in"

Insert: "45-5-502(4),"

Following: "45-5-503(4)"

Insert: ", 45-5-507(5),"

10. Page 15, line 9.

Following: "to"

Insert: "45-5-502(4),"

Following: "45-5-503(4)"

Insert: ", 45-5-507(5),"

11. Page 16, line 4.

Following: "to"

Insert: "45-5-502(4),"

Following: "45-5-503(4)"

Insert: ", 45-5-507(5),"

12. Page 17, line 25.

Following: "to"

Insert: "45-5-502(4),"

Following: "45-5-503(4)"

Insert: ", 45-5-507(5),"

13. Page 18, line 12.

Following: "assault"

Insert: ", and 45-5-502(4), sexual assault when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children"

14. Page 18, line 13.

Strike: ", and"

Insert: "; (ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children;
(x) "

Renumber: subsequent subsections

15. Page 19, line 26.

Following: "45-5-502(3)"

Insert: "(if the victim is less than 16 years of age and the offender is 3 or more years older than the victim) or (4) (if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children)"

16. Page 19, line 28.

Following: "victim"

Insert: "or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children"

17. Page 27, line 30.

Following: "to"

Insert: "45-5-502(4),"

Following: "45-5-503(4)"

Insert: ", 45-5-507(5),"

18. Page 28, line 19.

Following: "to"

Insert: "45-5-502(4),"

19. Page 28, line 20.

Following: "45-5-503(4)"

Insert: ", 45-5-507(5),"

20. Page 32, line 1.

Following: "to"

Insert: "45-5-502(4),"

Following: "45-5-503(4)"

Insert: ", 45-5-507(5),"

21. Page 32, line 28.

Strike: "20"

Insert: "24"

22. Page 32, line 29.

Strike: "20"

Insert: "24"

23. Page 33, line 7.

Strike: "12"

Insert: "16"

Strike: "17"

Insert: "21"

- END -